

## **APPENDIX B: MONITORING RULES**

### **SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES**

#### **SECTION .0600 – AREA AUTHORITY OR COUNTY PROGRAM MONITORING OF FACILITIES AND SERVICES**

##### **10A NCAC 27G .0601 SCOPE**

(a) This Section governs Local Management Entity (LME) monitoring of the provision of public services in the LME's catchment area.

(b) The LME shall monitor the provision of public services in the LME's catchment area.

(c) The LME shall develop and implement written policies governing monitoring of the provision of public services that include:

- (1) receiving, reviewing and responding to level II and level III incident reports as set forth in Rules .0603, .0604, and .0605 of this Section;
- (2) receiving and responding to complaints concerning the provision of public services, as set forth in Rule .0606 of this Section;
- (3) conducting local monitoring of Category A and B providers of public services as set forth in Rule .0608 of this Section; and
- (4) analyzing and reporting trends in the information identified in Subparagraphs (c)(1) through (c)(3) of this Rule, as set forth in Rule .0608 of this Section.

(d) An LME or provider of public services shall exchange information, including confidential information, when necessary to coordinate and carry out the monitoring functions as set forth in this Section. Sharing of information shall conform to 42 CFR, Part 2 for persons receiving Substance Abuse Services. The exchange of information shall apply as follows:

- (1) an LME to another LME;
- (2) an LME to a provider of public services;
- (3) a provider of public services to an LME;
- (4) a provider of public services to another provider of public services;
- (5) a provider of public services to the Department;
- (6) an LME to the Department;
- (7) the Department to an LME; and
- (8) the Department to a provider of public services.

*History Note: Authority G.S. 122C-112.1; 143B-139.1;  
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##### **10A NCAC 27G .0602 DEFINITIONS**

In addition to the terms defined in G.S. 122C-3 and Rules .0103 and .0104 of this Subchapter, the following terms shall apply to the rules in this Section:

- (1) "Complaint investigation" means the process of determining if an allegation made against a provider concerning the provision of public services is substantiated.
- (2) "ICF/MR" means a facility certified for Medicaid as an Intermediate Care Facility for the Mentally Retarded.
- (3) "Level I incident" means the same as defined in 10A NCAC 27G .0103(b)(32) and does not meet the definition of a level II incident or level III incident.
- (4) "Level II incident" means the same as defined in 10A NCAC 27G .0103(b)(32), including a client death due to natural causes or terminal illness, or results in a threat to a client's health or safety, or a threat to the health or safety of others due to client behavior and does not meet the definition of a level III incident.
- (5) "Level III incident" means the same as defined in 10A NCAC 27G .0103(b)(32) and results in:
  - (a) a death, sexual assault, or permanent physical or psychological impairment to a client;
  - (b) a substantial risk of death, or permanent physical or psychological impairment to a client;

- (c) a death, sexual assault, permanent physical or psychological impairment caused by a client;
- (d) a substantial risk of death or permanent physical or psychological impairment caused by a client;  
or
- (e) a threat caused by a client to a person's safety.
- (6) "Local Monitoring" means LME monitoring of the provision of public services in its catchment area that are provided by Category A and B providers.
- (7) "Monitor" or "Monitoring" means the interaction between the LME and a provider of public services regarding the functions set forth in Rule .0601(c) of this Section.
- (8) "Provider category" means the type of facility in which a client receives services or resides. The provider category determines the extent of monitoring that a provider receives and is determined as follows:
  - (a) Category A - facilities licensed pursuant to G.S. 122C, Article 2, except for hospitals. These include 24-hour residential facilities, day treatment, PRTFs and outpatient services;
  - (b) Category B – G.S. 122C, Article 2, community based providers not requiring State licensure;
  - (c) Category C - hospitals, state-operated facilities, nursing homes, adult care homes, family care homes, foster care homes or child care facilities; and
  - (d) Category D - individuals providing only outpatient or day services and who are licensed or certified to practice in the State of North Carolina.

*History Note:* Authority G.S. 122C-112.1; 143B-139.1;  
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#### **10A NCAC 27G .0603 INCIDENT RESPONSE REQUIREMENTS FOR CATEGORY A AND B PROVIDERS**

(a) Category A and B providers shall develop and implement written policies governing their response to level I, II or III incidents. The policies shall require the provider to respond by:

- (1) attending to the health and safety needs of individuals involved in the incident;
- (2) determining the cause of the incident;
- (3) developing and implementing corrective measures according to provider specified timeframes not to exceed 45 days;
- (4) developing and implementing measures to prevent similar incidents according to provider specified timeframes not to exceed 45 days;
- (5) assigning person(s) to be responsible for implementation of the corrections and preventive measures;
- (6) adhering to confidentiality requirements set forth in G.S. 75, Article 2A, 10A NCAC 26B, 42 CFR Parts 2 and 3 and 45 CFR Parts 160 and 164; and
- (7) maintaining documentation regarding Subparagraphs (a)(1) through (a)(6) of this Rule.

(b) In addition to the requirements set forth in Paragraph (a) of this Rule, ICF/MR providers shall address incidents as required by the federal regulations in 42 CFR Part 483 Subpart I.

(c) In addition to the requirements set forth in Paragraph (a) of this Rule, Category A and B providers, excluding ICF/MR providers, shall develop and implement written policies governing their response to a level III incident that occurs while the provider is delivering a billable service or while the client is on the provider's premises. The policies shall require the provider to respond by:

- (1) immediately securing the client record by:
  - (A) obtaining the client record;
  - (B) making a photocopy;
  - (C) certifying the copy's completeness; and
  - (D) transferring the copy to an internal review team;
- (2) convening a meeting of an internal review team within 24 hours of the incident. The internal review team shall consist of individuals who were not involved in the incident and who were not responsible for the client's direct care or with direct professional oversight of the client's services at the time of the incident. The internal review team shall complete all of the activities as follows:
  - (A) review the copy of the client record to determine the facts and causes of the incident and make recommendations for minimizing the occurrence of future incidents;
  - (B) gather other information needed;

- (C) issue written preliminary findings of fact within five working days of the incident. The preliminary findings of fact shall be sent to the LME in whose catchment area the provider is located and to the LME where the client resides, if different; and
- (D) issue a final written report signed by the owner within three months of the incident. The final report shall be sent to the LME in whose catchment area the provider is located and to the LME where the client resides, if different. The final written report shall address the issues identified by the internal review team, shall include all public documents pertinent to the incident, and shall make recommendations for minimizing the occurrence of future incidents. If all documents needed for the report are not available within three months of the incident, the LME may give the provider an extension of up to three months to submit the final report; and
- (3) immediately notifying the following:
  - (A) the LME responsible for the catchment area where the services are provided pursuant to Rule .0604;
  - (B) the LME where the client resides, if different;
  - (C) the provider agency with responsibility for maintaining and updating the client's treatment plan, if different from the reporting provider;
  - (D) the Department;
  - (E) the client's legal guardian, as applicable; and
  - (F) any other authorities required by law.

*History Note:* Authority G.S. 122C-112.1; 143B-139.1;  
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#### **10A NCAC 27G .0604 INCIDENT REPORTING REQUIREMENTS FOR CATEGORY A AND B PROVIDERS**

- (a) Category A and B providers shall report all level II incidents, except deaths, that occur during the provision of billable services or while the consumer is on the providers premises or level III incidents and level II deaths involving the clients to whom the provider rendered any service within 90 days prior to the incident to the LME responsible for the catchment area where services are provided within 72 hours of becoming aware of the incident. The report shall be submitted on a form provided by the Secretary. The report may be submitted via mail, in person, facsimile or encrypted electronic means. The report shall include the following information:
  - (1) reporting provider contact and identification information;
  - (2) client identification information;
  - (3) type of incident;
  - (4) description of incident;
  - (5) status of the effort to determine the cause of the incident; and
  - (6) other individuals or authorities notified or responding.
- (b) Category A and B providers shall explain any missing or incomplete information. The provider shall submit an updated report to all required report recipients by the end of the next business day whenever:
  - (1) the provider has reason to believe that information provided in the report may be erroneous, misleading or otherwise unreliable; or
  - (2) the provider obtains information required on the incident form that was previously unavailable.
- (c) Category A and B providers shall submit, upon request by the LME, other information obtained regarding the incident, including:
  - (1) hospital records including confidential information;
  - (2) reports by other authorities; and
  - (3) the provider's response to the incident.
- (d) Category A and B providers shall send a copy of all level III incident reports to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services within 72 hours of becoming aware of the incident. Category A providers shall send a copy of all level III incidents involving a client death to the Division of Health Service Regulation within 72 hours of becoming aware of the incident. In cases of client death within seven days of use of seclusion or restraint, the provider shall report the death immediately, as required by 10A NCAC 26C .0300 and 10A NCAC 27E .0104(e)(18).

(e) Category A and B providers shall send a report quarterly to the LME responsible for the catchment area where services are provided. The report shall be submitted on a form provided by the Secretary via electronic means and shall include summary information as follows:

- (1) medication errors that do not meet the definition of a level II or level III incident;
- (2) restrictive interventions that do not meet the definition of a level II or level III incident;
- (3) searches of a client or his living area;
- (4) seizures of client property or property in the possession of a client;
- (5) the total number of level II and level III incidents that occurred; and
- (6) a statement indicating that there have been no reportable incidents whenever no incidents have occurred during the quarter that meet any of the criteria as set forth in Paragraphs (a) and (d) of this Rule and Subparagraphs (1) through (4) of this Paragraph.

*History Note:* Authority G.S. 122C-112.1; 143B-139.1;  
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#### **10A NCAC 27G .0605 LOCAL MANAGEMENT ENTITY MANAGEMENT OF INCIDENTS**

Upon learning of a level III incident that occurs while a client is in the care of a provider or on a provider's premises, the LME shall respond by:

- (1) determining that necessary actions have been taken to protect the client's health and safety;
- (2) determining the client records are secured as set forth in Rule .0603 of this Section;
- (3) determining that a meeting of an internal review team is convened within 24 hours as set forth in Rule .0603 of this Section;
- (4) ensuring the client's legal guardian, as applicable, and other authorities are notified as set forth in Rule .0603 of this Section;
- (5) reviewing the internal review team's preliminary findings and final report;
- (6) considering any internal review team's request for an extension of up to three months to file the final report, if necessary to gather all relevant documents; and
- (7) conducting local monitoring of the provider according to the requirements as set forth in Rule .0608 of this Section.

*History Note:* Authority G.S. 122C-112.1; 143B-139.1;  
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Eff. July 1, 2004;  
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#### **10A NCAC 27G .0606 REFERRAL OF COMPLAINTS TO LOCAL MANAGEMENT ENTITIES PERTAINING TO CATEGORY A OR CATEGORY B PROVIDERS**

(a) The Local Management Entity shall respond to complaints received concerning the provision of public services or client rights pertaining to Category A and B providers within its catchment area.

(b) When the Local Management Entity is a subject of the complaint, the LME shall refer the complaint concerning a Category A provider to the Division of Health Service Regulation, or a Category B provider to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

(c) When the LME receives a complaint concerning a Category A provider, and the complaint is related to a North Carolina rule, the LME shall forward the complaint directly to the Division of Health Service Regulation.

(d) When the LME receives a complaint concerning a community-based ICF/MR, the LME shall forward the complaint directly to the Division of Health Service Regulation. The Division of Health Service Regulation is responsible for the complaint investigation.

(e) When a complaint investigation involving a Category B provider identifies an issue which if substantiated by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services could result in a revocation or suspension of the provider's funding pursuant to 10A NCAC 26C .0501 through .0504, the LME shall document the issue or issues creating the concern and notify the Division of Mental Health, Developmental Disabilities and Substance Abuse Services of the issue within 24 hours. The Division of Mental Health, Developmental Disabilities and Substance Abuse Services shall consult with

the LME, and shall then determine which agency will lead the investigation and which agencies need to be involved. Separate complaint investigations shall not be performed.

(f) When a complaint investigation results in the Local Management Entity initiating action to withdraw endorsement of a provider endorsed by the Local Management Entity, the LME shall follow the requirements identified in 10A NCAC 26C .0709.

(g) When facilities employ contract clinical staff to perform clinical functions as a component of the service provided by the provider, the Local Management Entity may investigate a complaint concerning the contracted clinician only if the complaint involves an individual being served in the context of the publicly funded service.

*History Note: Authority G.S. 122C-112.1; 143B-139.1;  
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#### **10A NCAC 27G .0607 COMPLAINTS PERTAINING TO CATEGORY A OR CATEGORY B PROVIDERS EXCLUDING ICF/MR FACILITIES**

*History Note: Authority G.S. 122C-112.1; 143B-139.1;  
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#### **10A NCAC 27G .0608 LOCAL MONITORING**

(a) The Local Management Entity shall develop and implement written policies governing local monitoring of Category A and B providers. The written policies shall address:

- (1) the frequency and extent of local monitoring based on the following:
  - (A) number and severity of level II or level III incidents reported by the provider;
  - (B) the provider's response to the incidents;
  - (C) the provider's compliance with the reporting requirements as set forth in Rule .0604 of this Section;
  - (D) the number and types of complaints received concerning a provider;
  - (E) the provider's response to the complaints;
  - (F) the conclusions reached from investigation of the complaints;
  - (G) the results of reviews conducted by the Division of Health Service Regulation, the Division of Mental Health, Developmental Disabilities and Substance Abuse Services or the Division of Social Services;
  - (H) compliance with the requirements of the provision of public services;
  - (I) the provider's quality improvement activities as required pursuant to 10A NCAC 27G .0201(7), and trends in improvement;
  - (J) compliance with the contract or Memorandum of Agreement with the Local Management Entity;
  - (K) the addition of a new service; and
  - (L) accreditation by an accreditation agency approved by the Secretary such as the Council on Accreditation (COA), the Council on Quality and Leadership (CQL), the Council on Accreditation of Rehabilitation Facilities (CARF), or The Joint Commission;
- (2) The quality of the mental health, developmental disabilities and substance abuse services of all providers;
- (3) For Category A service providers, the LME shall defer to the Division of Health Service Regulation in the monitoring of any component of services provided which is an element of rule that is monitored by the Division of Health Service Regulation. For Category A providers, the LME shall monitor all components of services provided which are not found in Rule; and
- (4) If an investigation discloses issues that could affect either the provider's licensure if a Category A provider, or the provider's suspension according to 10A NCAC 26C .0501 through .0504, the Local Management Entity shall refer the provider to either the Division of Health Service Regulation or the Division of Mental Health, Developmental Disabilities and Substance Abuse Services pursuant to Rule .0606 of this Section.

(b) When local monitoring occurs, the Local Management Entity shall communicate the results to the provider within 15 calendar days of completion. The communication of the results shall constitute a local monitoring report that includes:

- (1) identification of each service monitored;
- (2) identification of any issues requiring correction; and
- (3) the timelines for implementing the corrections which shall not exceed 60 days from the date the provider receives the local monitoring report.

(c) A Local Management Entity that conducts the local monitoring of a provider serving another Local Management Entity's client shall provide a copy of the local monitoring report to the client's home Local Management Entity within 15 calendar days of completion.

*History Note: Authority G.S. 122C-112.1; 143B-139.1;  
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#### **10A NCAC 27G .0609 LOCAL MANAGEMENT ENTITY REPORTING REQUIREMENTS**

(a) As part of its quality improvement process as set forth in Rule .0201(a)(7) of this Subchapter, the LME shall review, not less than quarterly, patterns and trends in:

- (1) level I, level II and level III incidents;
- (2) complaints concerning the provision of public services; and
- (3) local monitoring results gathered pursuant to requirements established in 10A NCAC 27G .0608.

(b) The LME shall provide reports based on the review specified in Paragraph (a) of this Rule. The reports shall be submitted via electronic means to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services quarterly on forms provided by the Secretary. Copies of the reports shall be provided to the LME's area board, local Consumer and Family Advisory Committee, established by G.S. 122C-170, and the local Client Rights Committee, established by Rule .0504 of this Subchapter.

(c) The reports shall include the following:

- (1) summary numbers of the types of complaints, incidents and results of local monitoring;
- (2) trends identified through analyses of complaints, incidents and local monitoring; and
- (3) use of the analyses for improvement of the service system and planning of future monitoring activities.

*History Note: Authority G.S. 122C-112.1; 143B-139.1;  
Eff. July 1, 2004;  
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#### **10A NCAC 27G .0610 REQUIREMENTS CONCERNING THE NEED FOR PROTECTIVE SERVICES**

(a) If the circumstances identified surrounding an incident, complaint or local monitoring give reasonable cause to believe that a disabled adult receiving services from a Category A or Category B provider may be abused, neglected or exploited and in need of protective services, the Local Management Entity shall ensure the procedures outlined in G.S. 108A, Article 6, are initiated.

(b) If the circumstances surrounding an incident, complaint or local monitoring reveal that a child or adolescent may be abused, neglected or exploited and in need of protective services, the Local Management Entity shall ensure the procedures outlined in G.S. 7B, Article 3, are initiated.

*History Note: Authority G.S. 122C-112.1; 143B-139.1;  
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